

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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April 13, 2021

Cancellation No. 92025859

*Empresa Cubana Del Tabaco d.b.a
Cubatabaco*

v.

General Cigar Co., Inc.

Katie Bukrinsky, Interlocutory Attorney:

On April 6, 2021, the parties filed a consent motion for relief, by which they jointly request: (1) leave to file overlength briefs; (2) an extension of the trial brief deadlines; and (3) that the Board defer consideration of Respondent's motion to strike, which has not yet been filed. 331 TTABVUE.

I. Overlength Briefs

Trademark Rule 2.128(b) provides that "a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety." 37 C.F.R. § 2.128(b). Evidentiary objections may be raised separately. *Id.*

Motions for leave to file a brief on the case in excess of the page limit are disfavored by the Board and rarely granted. *See* TBMP § 537. This is so even in those cases

where the motion is filed with the consent of the adverse party or parties. *See First Niagara Ins. Brokers Inc. v. First Niagara Fin. Grp. Inc.*, 77 USPQ2d 1334, 1336 n.4 (TTAB 2005), *rev'd on other grounds*, 476 F.3d 867, 81 USPQ2d 1375 (Fed. Cir. 2007). Because the Board is an administrative tribunal of limited jurisdiction, empowered to determine only the right to register, very few of the cases before it are of such a nature as to require a brief on the case that exceeds the page limit in Trademark Rule 2.128(b). *See* TBMP § 537.

Further, one of the primary purposes of the rule is to assist the Board in managing its workload, and to encourage litigants to focus their arguments and eliminate needless verbiage. *See* TBMP § 537. Trademark Rule 2.128(b) is for the benefit of the Board, and it is only with the Board's permission, timely sought, that a brief exceeding the page limit will be entertained. *Id.*

The parties request that they each be allowed to file a trial brief of seventy-five pages, exclusive of evidentiary objections, and that Petitioner be allowed to file a reply brief of forty pages, exclusive of objections. The parties state that the additional pages are needed because of the long history of this proceeding and the size of the record. 331 TTABVue 4-5. Petitioner asserted eleven grounds for cancellation, and Respondent asserted seven affirmative defenses. *See id.*

In this case, the Board does not find that the parties have demonstrated a compelling need to file overlength briefs, or that it will benefit the Board to permit the parties to exceed the page limits in Trademark Rule 2.128(b). *See United Foods Inc. v. United Air Lines Inc.*, 33 USPQ2d 1542, 1542 (TTAB 1994); TBMP § 537.

Accordingly, the parties' motion to file overlength briefs is **denied**. The parties are urged to focus their briefs on their most persuasive evidence and claims, and to state their arguments concisely, keeping in mind the limited jurisdiction of the Board.

II. Extension

The parties request an extension of remaining deadlines to allow time to brief Respondent's forthcoming motion to strike Petitioner's rebuttal witnesses.¹ 331 TTABVUE 5. The parties state that the extension is required because Respondent completed cross-examination of Petitioner's rebuttal witnesses 46 days after the close of Petitioner's rebuttal period. *Id.* at 5-6 and n.4.

Trademark Rule 2.123(c) provides that when a party timely elects to take oral cross-examination of an affiant, but the cross-examination cannot be completed within that testimony period, "the Board, after the close of that testimony period, shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the oral cross-examination(s)." 37 C.F.R. § 2.123(c). Respondent timely noticed its cross-examination of Petitioner's rebuttal witnesses on March 2, 2021. 328-330 TTABVUE. *See* 37 C.F.R. § 2.123(c). Respondent's last examination of Petitioner's rebuttal witnesses took place on April 2, 2021, forty-six days after the close of Petitioner's testimony period.² *See* 331 TTABVUE 6, n.4.

¹ In a phone conference held on March 31, 2021, the Board gave Respondent leave to file the motion to strike. Respondent states it will file its motion as soon as it receives the final deposition transcripts of Petitioner's rebuttal witnesses. 331 TTABVUE 5.

² Trademark Rule 2.123(c) provides that oral cross-examination must be completed within thirty days of its election. Respondent's last examination of Petitioner's rebuttal witnesses took place thirty-one days after its election. 331 TTABVUE 6, n.4. The Board sua sponte extends Respondent's period to complete cross-examination to April 2, 2021. *See* 37 C.F.R. §

Inasmuch as Respondent timely elected to take oral cross-examination of Petitioner's affiants and the cross-examination was completed after the close of the testimony period, the Board finds it appropriate to reset remaining deadlines. Accordingly, the parties' motion to extend the remaining deadlines is **granted**.³

III. Defer Consideration of Motion to Strike

The parties also request that the Board preemptively defer consideration of Respondent's forthcoming motion to strike Petitioner's rebuttal testimony until final decision. *See* TBMP § 502.01 and cases cited therein. Inasmuch as Respondent has not yet filed the motion, the Board declines to do so. Whether Respondent's motion should be deferred will be determined upon its review. Accordingly, this request is **deferred** pending the Board's review of Respondent's motion.⁴

IV. Remaining Dates Reset

The remaining dates are reset in accordance with the parties' stipulation:

Plaintiff's Opening Brief Due	7/1/2021
Defendant's Brief Due	9/1/2021
Plaintiff's Reply Brief Due	10/18/2021
Request for Oral Hearing (optional) Due	10/28/2021

2.123(c) ("Upon motion for good cause by any party, or upon its own initiative, the Board may extend the periods for electing and taking oral cross-examination.").

³ Any further requests to extend or suspend the schedule, even if consented, must include a detailed explanation for the requested modification.

⁴ If Respondent does not file a motion to strike, this request will be given no further consideration.